

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

ROBERT E. THOMAS, a/k/a, BOBBY A.
THOMAS,

Plaintiff,

v.

9:18-CV-1376
(MAD/DEP)

DEPARTMENT OF CORRECTIONS AND
COMMUNITY SUPERVISION,

Defendant.

APPEARANCES:

ROBERT E. THOMAS
12-B-1091
Plaintiff, pro se
Upstate Correctional Facility
P.O. Box 2001
Malone, NY 12953

MAE A. D'AGOSTINO
United States District Judge

DECISION and ORDER

Pro se plaintiff Robert Thomas ("Plaintiff") commenced this action on November 8, 2018, by filing a Complaint for relief pursuant to 42 U.S.C. § 1983 and an application to proceed in forma pauperis. Dkt. Nos. 1 ("Compl."); 2 ("IFP Application").

By Decision and Order filed January 9, 2019 (the "January Order"), the Court granted Plaintiff's IFP application and reviewed the sufficiency of the Complaint in accordance with 28 U.S.C. § 1915(e) and 28 U.S.C. § 1915A. Dkt. No. 4. On the basis of that review, the Court dismissed the Complaint for failure to state a claim upon which relief could be granted. *Id.* In

light of his pro se status, Plaintiff was afforded an opportunity to submit an Amended Complaint. See *id.* at 20. On January 16, 2019, in lieu of an Amended Complaint, Plaintiff filed a motion to withdraw the Complaint. Dkt. No. 5.

Rule 41(a) of the Federal Rules of Civil Procedure provides in relevant part that a plaintiff "may dismiss an action without a court order by filing . . . a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment." Fed. R. Civ. P. 41(a)(1)(A). Rule 41(a) further provides that unless the notice provides otherwise, "the dismissal is without prejudice." Fed. R. Civ. P. 41(a)(1)(B).

Since defendants have not been served, and have neither answered nor moved for summary judgment, Plaintiff is entitled to voluntary dismissal of the action, without further order of the court, upon the filing of such a notice. Fed. R. Civ. P. 41(a)(1)(A)(i). And, by rule, "[u]nless the notice . . . states otherwise, the dismissal is without prejudice. . . ." Fed. R. Civ. P. 41(a)(1)(B).

In light of the foregoing, upon the filing of Plaintiff's motion to withdraw, this action is dismissed, without prejudice.

WHEREFORE, it is hereby

ORDERED that the Clerk of the Court close this case and reflect that the action is voluntarily dismissed without prejudice pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure; and it is further

ORDERED that the Clerk serve a copy of this Decision and Order on Plaintiff.

IT IS SO ORDERED.

Dated: January 29, 2019


Mae A. D'Agostino
U.S. District Judge